DATO' V. KANAGALINGAM

v.

TOMMY THOMAS & ANOR. & ANOTHER CASE

HIGH COURT MALAYA, KUALA LUMPUR
RAHMAH HUSSAIN J
[SUIT NO: S4-23-19-96]
18 JUNE 1997

CIVIL PROCEDURE: *Damages - General damages - Claim for damages for defamation - Whether could be quantified - Whether could only be claimed at large - Whether quantification of general damages prohibited by statutes - Defamation Act 1957 - Rules of the High Court 1980, O. 22 r. 1, O. 78 r. 4(1)*

CIVIL PROCEDURE: *Pleadings - Functions - Whether to contain all material facts - Claim for damages for defamation - Claim quantified in statement of claim - Whether in conformity with established principle of pleadings*

The appellant in this case had sued the respondents for defamation and claimed from the latter a quantified amount of RM30 million as general damages. Before the learned Senior Assistant Registrar, the respondents successfully argued that the appellant was not entitled in law to quantify his claim as such, and consequently obtained an order to strike out the words 'amounting to RM30,000,000' appearing in the appellant's writ and statement of claim. The appellant appealed and argued that quantification of damages ought to be allowed as (i) it was not prohibited by the relevant statutes (ii) case laws such as *Chattell v. Daily Mail Publishing Co. (Ltd.), Rustom K Karanjia & Anor. v. Krishnaraj Thackersey and Drane v. Evangelou & Ors.* showed very clearly that such damages could be quantified. The respondents contended that the damages claimed was excessive and should not therefore be allowed to be quantified. This apart, they also cited the case of *Sri Kuala Lumpur v. Dian Lai* wherein quantification of general damages was apparently disallowed by the High Court.

Held:

[1] There are no specific provisions in the relevant statutes, namely the Defamation Act 1957 and Rules of the High Court 1980, that prohibit plaintiffs from quantifying general damages. That being so, the appellant should be entitled to plead a specified amount on the damages claimed.

[2] Quantification in the present case is justified as the claim for damages included aggravated and/or exemplary damages. The quantification will obviate the element of surprise or shock for the respondents and will also prevent the appellant from asking for a more exorbitant figure at the end of trial.

[3] The case laws as cited by the appellant showed that general damages can in fact be quantified. Bearing this in mind, and the fact that the *Sri Kuala Lumpur* case was decided by this Court without the benefit of these new authorities, that decision ought to be, and is hereby overruled.

[Appeal allowed.]

Cases referred to:

Sri Kuala Lumpur v. Dian Lai (S4-23-113-96) ***(ovrd)***

Chattell v. Daily Mail Publishing Co. (Ltd.) The Times Law Reports Vol XVIII (1901-02) ***(foll)***

Rustom K Karanjia & Anor. v. Krishnaraj Thackersey AIR (57) [1970] Bombay 424 ***(foll)***

Drane v. Evangelou & Ors. [1978] 2 All ER 437 ***(foll)***

Spedding v. Fitzpatrick (1888) Vol XXXVIII CD 410 ***(refd)***

Wong Eng v. Chock Mun Chong & Ors. [1963] 29 MLJ 204 ***(refd)***

Phillips v. Phillips and Others Vol IV (1878) QBD 127 ***(refd)***

Tham Kwa Chin v. Choong Hoong Sum [1954] 20 MLJ 161 ***(refd)***

London and Northern Bank Ltd. v. George Newnes [1899] 16 TLR 433 ***(refd)***

Carson v. John Fairfax 113 ALR 577 ***(refd)***

Modera v. Modera and Barclay [1893] 10 TLR 69 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 18 rr. 19(1)(b), (c), O. 22 r. 1, O. 78 r. 4(1)

For the plaintiff - V Siva (Peter Raj with him); M/s. V Siva & Partners

For the defendants - Raja Aziz Addruse (Karpal Singh & Darryl Goon with him); M/s. Raja Darryl & Loh, M/s. Shearn Delamore & Co., M/s. Zainur Zakaria & Co.

JUDGMENT

Rahmah Hussain J:

This is an appeal against the Senior Assistant Registrar's decision in allowing the defendants' application to strike out the words "amounting to RM30,000,000" (Encl. 23) appearing in paras. 1 and 2 of the Indorsement on the Writ of Summons and para. 14(1) and (2) in the Statement of Claim. The defendants in Civil Suit 23-44-96 are also seeking to strike out the words "amounting to RM15,000,000" appearing in paras. A(1), A(2), B(1) and B(2)

of the Indorsement on the Writ of Summons and paras. 15(1) and 15(2) of the Statement of Claim (Encl. (7)).

Both applications for striking out are made under the provision of O. 18 r. 19(1)(b) and (c) of the Rules of High Court, *vis-a-vis*:

(1) that the said words are scandalous, frivolous and/or vexatious; or

(2) it may prejudice, embarrass or delay the fair trial of the action.

The defendants raised a preliminary issue before the Senior Assistant Registrar that this Court had decided in an earlier case of *Sri Kuala Lumpur v. Dian Lai* (S4-23-113-96) to the effect that general damages should not be quantified.

The defendants' main contention is that the amount of damages as stated in the Indorsement of the Writ of Summons and Statement of Claim is excessive and should not be quantified. While the plaintiff maintains that there are no specific statutes and case laws which prohibit quantification of damages.

Incidentally it was agreed between the parties that my decision in this appeal will be followed in a similar application in two other suits that is Nos. 23-39-96 and S4-23-44-96.

The plaintiff's present suit is one of defamation. It is the plaintiff's submission that the amount of general damages should be quantified for the following reasons:

1. The relevant statutes that govern such applications do not prohibit the quantification of damages. They are namely the Defamation Act 1957 and Rules of High Court 1980. There is not even a practice direction in this country which prohibits plaintiff's from quantifying the general damages sought for. Therefore the plaintiff is entitled to plead a specified amount.

2. There are case laws which support plaintiff's contention that damages can be quantified. He then cited the following authorities, namely,

   (a) *Chattell v. Daily Mail Publishing Co. (Ltd.) The Times Law Reports* Vol XVIII (1901-02)

   This is an action for libel, whereby the plaintiff claimed damages for the amount of ƒ1,000. It was held:

   The statement of claim in the action claimed ƒ1000 damages, and, no defence being delivered, interlocutory judgment was signed, and

the question as to the amount of damages was tried before the Under-Sheriff and a special jury. The jury returned a verdict for the plaintiff for £2,500. The plaintiff thereupon without amending the statement of claim, signed judgment for this amount. The defendants applied for a new trial upon the ground that the damages were excessive.

(b) *Rustom K Karanjia & Anor. v. Krishnaraj Thackersey,* AIR (57) 1970 Bombay 424

The plaintiff claimed in the present suit general damages of Rs3,000,000 on the ground that the plaintiff has been injured in his character, credit and reputation and in the way of his business and has been brought into the public hatred, contempt and ridicule. On appeal by first and second defendants the appeal was partly allowed, the decree of the trial Court is confirmed with the only modification that for the amount of Rs3,000,000 – Rs1,500,000 will be substituted.

(c) *Drane v. Evangelou & Ors.* [1978] 2 All ER 437

This is a claim for damages against defendant for a tortious act. This matter was taken up to Court of Appeal whereby the damages awarded by the Court below was upheld. But the Court of Appeal did not comment on the quantification of damages. Even though this is not a direct case on libel but on tort, it can be applied by analogy as defamation is a tortious act.

(c) *Odgers' Principles of Pleadings And Damages* at p. 245 wherein it was stated:

> In cases of unliquidated damages it is usual to claim damages at large but if you wish to insert a definite amount, be sure you claim enough, as the plaintiff cannot recover more than the sum claimed on his writ or statement of claim, unless the Judge gives leave to amend.

3. The established principle of pleadings requires the plaintiff to plead with sufficient particularity. In support of his contention he referred to three cases, that is:

(a) *Spedding v. Fitzpatrick* [1888] Vol XXXVIII CD 410 where it was held:

that under the present system, the Court will oblige a party to give such information as to the nature of his case as is requisite to prevent his opponent from being taken by surprise at the trial, ... and the names of the persons by whom they were done or made.

(b) *Wong Eng v. Chock Mun Chong & Ors.* [1963] 29 MLJ 204 at p. 60, whereby it was stated thus:

As Lord Normand stated in the House of Lords in the case of *Esso Petroleum Co. Ltd. v. Southpart Corporation:*

The function of pleadings is to give fair notice of the case which is to be made so that the opposing party may direct his evidence to the issue disclosed by them.

(a) *Phillips v. Phillips and Others* Vol. IV 1878 QBD 127 where it was stated at p. 138:

The plaintiff must state the facts which are material for the purpose of enabling the defendant to go to trial, knowing what the issue he really has to meet is, and what is the question between him and the plaintiff, so that he may not be there taken by surprise, and the real question between the parties fail to be decided in consequence of insufficient allegations of the plaintiff. The statement of claim, of necessity, must set out all the facts material to prevent the defendant being taken by surprise, because it is the first pleading and that which ought to be referred to for the purpose of seeing whether there is a cause of action.

To further strengthen his contention he referred to O. 22 r. 1(1) Rules of High Court 1980 which provides as follows:

In any action for a debt or damages any defendant may at any time after he has entered an appearance in the action pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

According to learned Counsel, this provision therefore allows quantification of damages. He added that O. 78 r. 4(1) of Rules of High Court 1980 also provides for payment into Court in an action for libel or slander. Thus unless damages are quantified such provision cannot take effect.

On the other hand the submission by learned Counsel for the first defendant is that general damages cannot be quantified for the following reasons: Firstly, this Court had decided in an earlier case, which was also conducted by Mr. Karpal Singh (S4-23-113-96) whereby the plaintiff was not allowed to quantify the general damages. Secondly, the authorities as cited by learned Counsel for the plaintiff in this case are not applicable as in those cases there was no objection raised as regards the quantification of damages. Thirdly, there are authorities to prove that quantification of general damages are not allowed, namely:

(a) *Tham Kwa Chin v. Choong Hoong Sum* [1954] 20 MLJ 161.

(b) *Raja Zamzam v. Vaithiyanathan* [1965] 2 MLJ 252.

This is a claim for personal injury due to road accident. Plaintiff claims general damages for injuries sustained in the sum of $30,000. Special damages were not claimed. Raja Azlan Shah observed that: "This is a peculiar way of claiming general damages. It is not the present practice to specify the amount of the general damages in the pleadings.

Learned Counsel for the first defendant added, as was said by Lord Goddard in *British Transport Commission v. Gourley* [1956] AC 185 at p. 206:

In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damages which has to be specially pleaded and proved ... Secondly there is general damages which the law implies and which is not specially pleaded.

Learned Counsel for the second defendant's submission is that firstly quantification of damages is not allowed in English cases. He refers to two authorities:

(a) *The Supreme Court Practice* 1995 Vol 1 *London & Northern Bank Ltd. v. George Newnes* [1899] 16 TLR 433 per Lord Vaughan William LJ.

where the damages claimed are unliquidated, the plaintiff need not insert a specific figure, but may claim damages generally;

(b) *Atkin's Encyclopaedia of Court Forms* Vol 32 1994 Issue at p.28:

General damages: Particulars of general damages i.e. Unliquidated or unascertained damages are not required to be specifically pleaded.

London & Northern Bank Ltd. v. George Newnes.

At the end of the submission I made the following decision:

> In the light of the new authorities cited to me by learned Counsel for the plaintiff in this case and which I did not have the benefit of assisting me when I made my decision in Case No S4-23-113-96 I feel it is only proper for me to overrule my earlier decision in the said case. Furthermore, in this case the quantification is justified as the claim for damages included aggravated and/or exemplary damages. This will obviate the element of surprise or shock for the defendants and will also prevent the plaintiff from asking for a more exorbitant figure at the end of trial. In the circumstances, the appeal is allowed with costs to be taxed as agreed upon between parties.

I was fortified in overruling my earlier decision by the case of *Carson v. John Fairfax* 113 ALR 577. In this case the trial Judge refused to accept the view that awards for pain and suffering in personal injury actions provide any guidance as to what is a reasonable award of damages in a defamation action. At p. 629 it was stated:

> Awards in personal injury cases and defamation actions serve different purposes, have different elements and different histories. They are not comparable. I think that it is a mistake to believe that the pain and suffering component of a personal injury award can be isolated from the other components of that award and then compared to an award of compensatory damages in defamation action.

Another case which I took into consideration before coming to such a decision was *Modera v. Modera and Barclay* [1893] 10 TLR 69 In Odgers' Principles of Pleadings and Damages it was stated:

> In cases of unliquidated damages it is usual to claim damages at large but if you wish to insert a definite amount, be sure you claim enough as the plaintiff cannot recover more than the sum claimed on his writ or statement of claim unless the Judge gives leave to amend.

Furthermore in the *Sri Kuala Lumpur* case (S4-23-113-96) the first plaintiff is a local private school while the second plaintiff is a school teacher of the said school.

In comparison, the plaintiff in this case is a prominent lawyer with vast experience and the plaintiffs in S4-23-44-96 are big growing concerns. The publication of the alleged defamatory articles in the *Sri Kuala Lumpur's* case is also limited to national level as the said defamatory articles only appeared in the local newspapers and television stations. Whereas in the present case the publication of the alleged defamatory article appeared in the International Commercial Litigation which enjoys worldwide circulation and thus the effect is wider and also at International level.

Lastly I agreed with learned Counsel for the plaintiff, that the principles of pleadings are at best served as guidance only as to what needed to be particularised in the Statement of Claim, so as to obviate the element of shock and surprise. Further, since there are no specific provisions on the relevant statutes, namely the Defamation Act 1957, Rules of High Court 1980, which prohibit plaintiffs from quantifying general damages and the case laws cited by learned Counsel for the plaintiff have also highlighted that general damages can in fact be quantified in certain cases I feel, the plaintiff in the present case was thus justified in doing so.

Reported by WA Sharif